

**UNITED STATES OF AMERICA
BEFORE THE
OFFICE OF THRIFT SUPERVISION**

In the Matter of:

**Jones, Walker, Waechter, Poitevent,
Carrere & Denegre, L.L.P.**

**Former Outside Counsel for
Eureka Homestead Society
New Orleans, Louisiana**

OTS Order No.: MWR-99-4

Date: August 12, 1999

**STIPULATION AND CONSENT TO THE ISSUANCE OF AN
ORDER TO CEASE AND DESIST FOR AFFIRMATIVE RELIEF**

WHEREAS, the Office of Thrift Supervision ("OTS"), based upon information derived from the exercise of its regulatory responsibilities, has informed Jones, Walker, Waechter, Poitevent, Carrere & Denegre, L.L.P. (the "Firm"), former outside counsel representing Eureka Homestead Society, New Orleans, Louisiana ("Eureka" or the "Institution"), that grounds exist to initiate an administrative cease and desist proceeding against it pursuant to 12 U.S.C. § 1818(b);¹ and

WHEREAS, the Firm desires to cooperate with the OTS and to avoid the time and expense of such administrative proceeding and, without any adjudication on the merits and solely for the purposes of settlement in accord with Federal Rule of Evidence 408 and, without admitting or denying that such grounds exist, and further without admitting or denying the

¹ All references to the United States Code ("U.S.C.") are as amended, unless otherwise indicated.

Findings of Fact or opinions and conclusions of the OTS stated herein, except as to Jurisdiction, paragraph 1, below, which is admitted, hereby stipulates and agrees to the following:

1. Jurisdiction.

(a) Eureka is a "savings association" within the meaning of 12 U.S.C. § 1813(b) and 12 U.S.C. § 1462(4). Accordingly, it is an "insured depository institution" as that term is defined in 12 U.S.C. § 1813(c);

(b) The Firm, which provided legal services to and on behalf of Eureka, is an "institution-affiliated party" as that term is defined in 12 U.S.C. § 1813(u), having served in such capacity within 6 years of the date hereof (see 12 U.S.C. § 1818(i)(3)); and

(c) Pursuant to 12 U.S.C. § 1813(q), the Director of the OTS is the "appropriate Federal banking agency" to maintain an enforcement proceeding against such a savings association or its institution-affiliated parties. Therefore, for purposes of this Stipulation and Order and solely with respect to the matters set forth herein, the Firm is subject to the jurisdiction of the OTS to initiate and maintain a cease and desist proceeding against it pursuant to 12 U.S.C. § 1818(b). The Director of the OTS has delegated to the Regional Director of the Midwest Region of the OTS or his designee ("Regional Director"), the authority to issue cease and desist orders where the respondent has consented to the issuance of the order.

2. OTS Findings of Fact. The OTS finds that:

(a) In October, 1993, OTS examiners discovered that Eureka's President, Paul D. Clayton ("Clayton"), had engaged in unauthorized securities trading on behalf of Eureka with several brokers, including Howard, Weil, Labouisse, Friedrichs, Inc. ("Howard Weil"). Eureka hired the Firm in connection with this matter, and the Firm represented Eureka for approximately twelve days. The Firm failed to make a full disclosure of its attorney-client relationship with Howard Weil, and it failed to obtain any waiver from Eureka for that conflict.

(b) In March, 1994, Eureka filed an action against Howard Weil (the "Action") seeking, among other things, to recover damages from Howard Weil for losses incurred as a result of Clayton's unauthorized trading. The Firm sought Eureka's waiver of any conflict so that it could represent Howard Weil in the Action. Eureka refused to waive the conflict, and the Firm proceeded to file an answer on behalf of Howard Weil. Eureka filed a motion to disqualify the Firm, and the Court issued an order disqualifying the Firm and ordering Howard Weil to select new counsel.

(c) The above-described actions of the Firm constituted a conflict of interest and breaches of fiduciary duty. These actions caused Eureka to incur more than minimal losses, including, but not limited to, the legal fees incurred by Eureka in litigating its motion to disqualify.

3. **Consent.** The Firm consents to the issuance by the OTS of the accompanying Order to Cease and Desist For Affirmative Relief ("Order"). The Firm further agrees to comply with the terms of the Order upon issuance and stipulates that the Order complies with all requirements of law.

4. **Finality.** The Order is issued pursuant to 12 U.S.C. § 1818(b). Upon its issuance by the OTS, it shall be a final order, effective and fully enforceable by the OTS under the provisions of 12 U.S.C. § 1818(i). The Order constitutes the final disposition of any and all claims and proceedings that the OTS could bring against the Firm and/or any of its past or present partners, employees, agents, successors or assigns, arising from, or in any manner relating to the formal examination of Eureka conducted under OTS Resolution No. DAL-94-13 (dated July 20, 1994) including, but not limited to, the matters set forth in this Stipulation.

5. Waivers. The Firm waives the following:

- (a) the right to be served with a written notice of the OTS's charges against the Firm as provided by 12 U.S.C. § 1818(b);
- (b) the right to an administrative hearing of the OTS's charges against the Firm as provided by 12 U.S.C. § 1818(b);
- (c) the right to seek judicial review of the Order, including, without limitation, any such right provided by 12 U.S.C. § 1818(h), or otherwise to challenge the validity of the Order;
- (d) any and all claims against the OTS, including its employees and agents, and any other governmental entity for the award of fees, costs or expenses related to this OTS enforcement matter and/or the Order, whether arising under common law, the Equal Access to Justice Act, 5 U.S.C. § 504, or 28 U.S.C. § 2412; and
- (e) the right to assert this proceeding, its consent to the issuance of the Order, the issuance of the Order, the payment of any monies or the provision of any other financial relief as contemplated by the Order as the basis for a claim of double jeopardy in any pending or future proceeding brought by the United States Department of Justice or any other governmental entity.

6. Other Governmental Actions Not Affected. The Firm acknowledges and agrees that the consent to the issuance of the Order is for the purpose of resolving this OTS enforcement matter only as it relates to the Firm's involvement in the matters set forth above in Paragraph 2, and does not release, discharge, compromise, settle, dismiss, resolve, or in any way affect any actions, charges against, or liability of the Firm that arise pursuant to this action, or otherwise, and that may be or have been brought by another governmental entity.

7. Agreement for Continuing Cooperation. The Firm agrees that, at the OTS's written request, on reasonable notice and without service of a subpoena, it will provide discovery and will provide a representative to testify truthfully at any judicial or administrative proceeding related to any investigation, litigation, or other proceeding maintained by the OTS relating to

Eureka or its institution-affiliated parties, except that the Firm does not waive any privilege against self-incrimination, if any, under the Fifth Amendment of the United States Constitution, any attorney-client privilege, or any attorney work product privilege. If the Firm invokes its privilege against self-incrimination under the Fifth Amendment of the United States Constitution and the OTS obtains a grant of immunity pursuant to 18 U.S.C. § 6001 et seq., the Firm agrees, consistent with any such grant of immunity, to provide discovery and testify truthfully at any judicial, administrative, or investigative proceeding on the matter for which immunity is given.

8. **Miscellaneous.**

(a) The construction and validity of this Stipulation and the Order shall be governed by the laws of the United States of America;

(b) All references to the OTS in this Stipulation and the Order shall also mean any of the OTS's predecessors, successors, and assigns;

(c) The section and paragraph headings in this Stipulation and the Order are for convenience only, and such headings shall not affect the interpretation of this Stipulation or the Order;


(d) The terms of this Stipulation and the Order represent the final written agreement of the parties with respect to the subject matters hereof, and constitute the sole agreement of the parties with respect to such subject matters; and

(e) This Stipulation and the Order shall remain in effect for a period of three years from the effective date of the Order unless terminated, modified, or suspended in writing by the OTS, acting through its Director, Regional Director, or other authorized representative.


WHEREFORE, Jones, Walker, Waechter, Poitevent, Carrère & Denègre, L.L.P.
executes this Stipulation and Consent to the Issuance of an Order to Cease and Desist for
Affirmative Relief, intending to be legally bound hereby.

Accepted by:

OFFICE OF THRIFT SUPERVISION



Jones, Walker, Waechter, Poitevent,
Carrère & Denègre, L.L.P.
Chairman of Executive Committee



Frederick R. Casteel
Regional Director
Midwest Region

Dated: 8/9/99

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**Former Outside Counsel for
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**CONSENT ORDER TO
CEASE AND DESIST FOR AFFIRMATIVE RELIEF**

WHEREAS, Jones, Walker, Waechter, Poitevent, Carrere & Denegre, L.L.P. (the "Firm"), has executed a Stipulation and Consent to the Issuance of an Order to Cease and Desist for Affirmative Relief ("Stipulation"); and

WHEREAS, the Firm, by its execution of the Stipulation, has consented and agreed to the issuance of this Consent Order to Cease and Desist for Affirmative Relief ("Order") pursuant to 12 U.S.C. § 1818(b);¹ and

WHEREAS, the Director of the Office of Thrift Supervision ("OTS") has delegated to the Regional Directors of the OTS the authority to issue Orders to Cease and Desist on behalf of the OTS where the respondent has consented to the issuance of the Order.

NOW, THEREFORE, IT IS ORDERED THAT:

1. For purposes of this Order, the phrase "insured depository institution" shall mean any savings and loan association, savings bank, commercial bank, credit union, or any other depository institution that holds federally insured deposits, any non-diversified holding company of such institution, and a diversified holding company of such institution

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to the extent that the services provided directly relate to a subsidiary federally insured institution.

2. The Firm shall not represent in the same matter or transaction both (a) an insured depository institution and (b) any other person or entity, including a subsidiary of an insured depository institution (as that term is defined in 12 U.S.C. § 1813(w)(4)) or another insured depository institution, with respect to a matter in which the interests of the insured depository institution and the other person or entity are adverse unless: (i) each such insured depository institution client (if a corporate entity, by an appropriate officer who has no conflicting duty to the other party) consents to such representation in such matter after full disclosure concerning the nature of any such conflict in that matter, which disclosure and consent shall be appropriately documented by the Firm; and (ii) such representation is permitted by the applicable standards of professional conduct.

3. During the course of the Firm's representation of any insured depository institution, it shall retain all documentation and files concerning or relating to any conflicts checks on any new or proposed matters relating to any such insured depository institution for a period of six years from the effective date of this Order.

4. The Firm shall pay restitution to Eureka Homestead Society in the total amount of Thirteen Thousand dollars (\$13,000) within ten (10) days of the entry of this Order. This restitution payment shall be made by tendering a certified check or bank draft payable to Eureka Homestead Society in the amount of \$13,000. The payment shall be delivered together with a cover letter explaining that it pertains to the restitution required by this Order, referencing the Order, to Joseph F. Griffin, Senior Attorney, Office of Thrift Supervision, Department of the Treasury, 1700 G Street, N.W., Washington, D.C. 20552.

5. All technical words or terms used in this Order, for which meanings are not specified or otherwise provided for by the provisions of this Order, shall, insofar as applicable, have meanings as defined in Chapter V of Title 12 of the Code of Federal Regulations, and any such technical words or terms used in this Order and undefined in said Code of Federal Regulations, shall have meanings that accord with their best custom and usage in the savings and loan industry.

6. The Stipulation is made a part hereof and is incorporated herein by reference.

7. The terms and provisions of this Order shall be binding upon, and inure to the benefit

of, the parties hereto and their successors in interest.

8. The Firm shall promptly respond to any request from the OTS for documents that the OTS reasonably requests to demonstrate compliance with this Order. This Order and Stipulation may be used in any proceeding brought by the OTS to enforce this Order, and shall not be used by the OTS for any other purpose.

9. This Order is and shall become effective on the date it is issued, as shown in the caption hereof. The Stipulation and the Order shall remain in effect for a period of three years from the effective date of the Order unless terminated, modified or suspended, in writing by the OTS, acting through its Director, Regional Director or other authorized representative.

OFFICE OF THRIFT SUPERVISION

By:



Frederick R. Casteel
Regional Director
Midwest Region